

From: Kenneth L. McCall
To: Microsoft ATR
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Subject: Microsoft Settlement.

I have been personally affected by Microsoft's monopolistic practices. For example I was required to buy Windows with a computer system, even though I bought the system to run OS/2 which included yet another Windows license.

I do not believe that the proposed settlement is an effective remedy. From the statement of Senator Patrick Leahy: "Our courts have developed a test for determining the effectiveness of a remedy in a Sherman Act case: The remedy must end the anticompetitive practices, it must deprive the wrongdoer of the fruits of the wrongdoing, and it must ensure that the illegality does not recur." I see nothing in the settlements that deprives Microsoft of their billions of dollars of illegally gotten gains. I think that the settlement is much too weak to end the anticompetitive practices. And based on Microsoft's past behavior I see no sign that the illegality will not recur.

An example of how it may recur is in the definition of Windows Operating System Product. One of the main points to the trial was Microsoft's attempt to prove that Internet Explorer was a part of the operating system. Microsoft even went so far as to fake demonstrations to prove the point. This settlement relieves them of that inconvenience in the future: Paragraph VI. U. ".....The software code that comprises a Windows Operating System Product shall be determined by Microsoft in its sole discretion." This sounds disturbingly like: "When I use a word," Humpty Dumpty said, in a rather scornful tone, "it means just what I choose it to mean - neither more nor less." Lewis Carrol Through the Looking Glass.

One feature lacking in the proposed settlement that would help restore competition to the software industry is the release to the public, not just Microsoft approved ISVs, of complete definitions of file formats and communications protocols.

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